The defect is a nullity and not an irregularity. As a winding-up petition, it will be dismissed in limine when it comes on for hearing. No amendment can rectify this defect. Secondly, if the defect were a formal defect or irregularity, I think that substantial injustice has been done to the company by the unavoidable impression given to the public that winding-up proceedings have been commenced against the company. In this respect, I do not agree with the argument of counsel for the petitioners that there was any waiver by the company of the irregularity by its application to court for validation orders. So long as the petition remains in the Registry as a winding-up petition, the company remains subject to all the statutory disabilities I have already mentioned.

For the above reasons, I order that the petition be struck out on the ground that it was improperly presented as a winding-up petition under the 1969 Rules. The petitioners will pay the costs of this application to be taxed.

*Application allowed.*

Solicitors: *Michael Khoo & BB Ong; Drew & Napier.*

Reported by *Terence Tan Bian Chye*

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## Ventura Navigation Inc v Port of Singapore Authority & Ors

HIGH COURT (SINGAPORE) - ADMIRALTY IN PERSONAM NO 343 OF 1987
CHAN SEK KEONG J
24 MAY 1989

*Shipping - Oil pollution damage, liability for - Escape from non-oil tanker - Whether liability limited - Preliminary question of law - Prevention of Pollution of the Sea Act 1971, ss 3, 4, 5, 13 & 14 - Prevention of Pollution of the Sea (Amendment) Act 1981 - Merchant Shipping (Oil Pollution) Act 1981, ss 3, 4, 5, 6, 9 & 18 - Civil Liability (Oil Pollution) Act 1973, ss 3, 6(1) & 10 - Merchant Shipping Act (Cap 172, 1970 Ed), s 295 - Prevention of Oil Pollution Act 1971 [UK], s 15*

*Tort - Oil pollution - Escape of oil from ship - Measures taken to prevent and reduce oil pollution - Liability of shipowner for such measures*

*Civil Procedure - Preliminary point of law - Whether liability for measures to prevent and reduce oil pollution damage limited or unlimited*

*Words and Phrases - 'Ship' - 'Liability' - Merchant Shipping (Oil Pollution) Act 1981, s 18 - Prevention of Pollution of the Sea Act 1971, s 14*

The plaintiffs were the owners of a motor tanker ('the ship') which ran aground on the edge of a reef due east of Batu Berhanti due to the admitted negligence of the servants or agents of the plaintiffs in the navigation or management of the ship. She was not carrying oil in bulk. The grounding ruptured the ship's tanks and oil escaped into the sea and was washed into the waters of Singapore. The first defendants and agents appointed by them therefore took measures to remove the oil to prevent and reduce the damage caused by oil pollution. The first defendants incurred expenses in so doing and are seeking to recover them under s 14 of the Prevention of Pollution of the Sea Act 1971, as amended by the 1981 amendment to the Act (collectively 'the PPSA 1971-81'). The oil pollution also caused damage and loss to the other defendants.

The dispute between the plaintiffs and the first defendants turns on the meaning of s 18 of the Merchant Shipping (Oil Pollution) Act 1981 ('the MSOPA') and its effect on s 14 of the PPSA. The issue as stated to the court as a preliminary point of law therefore concerned the liability of the plaintiffs to the first defendants. The plaintiffs claimed that the MSOPA and the PPSA were two statutory provisions which should be read as covering the same liability. The first defendants on the other hand claimed that the MSOPA dealt with oil pollution by oil tankers (which the ship was not), while the PPSA deals with oil pollution by non-oil tankers. The plaintiffs conceded that the claim of the first defendants was for the recovery of a statutory debt, but contended that the liability of the plaintiffs to the first defendants had been statutorily classified by s 18 of the MSOPA 1981 as damage coming within s 272(1)(d) of the MSOPA. The plaintiffs contended that their liability to the first defendants is a non-convention liability (since their ship is not an oil tanker), which is imposed by s 18(1) of the MSOPA 1981, and for that reason limited in extent by s 18(2).

The first defendants claimed that the word 'ship' was defined in s 2 to refer to all vessels carrying oil in bulk as cargo. The plaintiffs' ship, since it was not an oil tanker, did not therefore fall within the definition of 'ship' and therefore s 18 did not apply. Also the word 'liability' in s 18(1)(b) referred to a common law liability and not a statutory liability and therefore s 18 of the MSOPA 1981 did not apply and the liability of the plaintiffs to the defendants was not limited by s 18(2).

The plaintiffs argued that it was illogical to allow owners of oil tankers to restrict their liability but not owners of other ships. Notwithstanding the definition in s 2, the word 'ship' in s 18(1) should therefore be construed to mean any non-oil tanker as s 18 is intended to apply to non-convention liability. Since the plaintiffs are owners of such a ship, and have incurred such a liability, the plaintiffs' liability to the first defendants comes within the limitation of liability in s 18(2). The plaintiffs also claimed that the word 'liability' in s 18(1) covered the plaintiffs' statutory liability under s 14 of the PPSA 1971-81. In support of this, the plaintiffs said that the MSOPA 1981 and s 14 of the PPSA 1971-81 both came into force on the same day. The defendants claimed that the word 'liability' also covered liability at common law. The explanatory statement to the Bill for the PPSA 1971 supported this construction. The plaintiffs objected to reference being made to the explanatory statement on the grounds that it was prohibited.

**Held,** that the liability of the plaintiffs to the defendants was unlimited:

(1) The PPSA 1971 and the MSOPA 1981 are relatively new legislation in the field of environmental law enacted to regulate and impose liability on owners and operators of ships which discharge oil of any kind and other waste into or around Singapore waters thereby polluting the same and causing damage.

(2) The PPSA 1971 was enacted to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil 1954. The next piece of Singapore law in the same area was the Civil Liability (Oil Pollution) Act 1973 ('CLOPA 1973') which imposed strict liability on the owner of a ship for oil pollution damage caused by a discharge or escape of oil.

(3) The MSOPA 1981 was passed to give effect to the International Convention on Civil Liability for Oil Pollution Damage ('the Civil Liability Convention') and the Protocol done later. The MSOPA 1981 was substantially a re-enactment of the CLOPA 1973 (which was repealed) except that its scope was restricted to oil tankers.

(4) The fundamental principle of the Civil Liability Convention is that owners of oil tankers should be liable for oil pollution damage without fault on their part ('the convention liability'), subject to limited exceptions. This is provided for in s 3 of the MSOPA.

(5) Section 6(1) of the MSOPA allows a shipowner to restrict his liability the object of which was to strike a balance between the need to move oil from the oil-producing countries to oil-consuming countries and the shipowner's vital role in fulfilling such a need.

(6) The general effect of s 18 is as follows: a person ('the tortfeasor') is liable ('the liability') without fault, for the cost of preventive measures reasonably taken by any other person for the purpose of preventing or reducing oil pollution damage, (a) where there is a discharge of oil from a ship and preventive measures have been taken, or (b) where the tortfeasor incurs or might, but for the measures, have incurred a liability for any such damage. The liability under (b) is not a s 3 liability. The liability is deemed to be a liability for the purposes of s 272(1)(d) of the Merchant Shipping Act.

(7) There is, in the context of oil pollution damage to the environment, good logic and reason for the law to limit the liability of owners of oil tankers but not that of non-oil tankers for oil pollution damage, precisely on the ground that liability of the former is potentially much larger than that of the latter group. If the oil tanker owners were faced with unlimited liability, they would become uninsurable, which would result in higher costs for consumers.

(8) The interpretation of s 18 of the MSOPA 1981 advanced by the first defendants was correct. The expression 'ship' must bear its defined meaning. There is nothing in the context of that section which requires that it be interpreted in its ordinary non-defined sense of any ship which discharges oil or from which oil escapes.

(9) In defining 'ship' in this manner, Parliament has not restricted but has given effect to the intention of the Civil Liability Convention by following the definition of 'ship' as provided in art 1(7) therefore. The convention was never intended to deal with the escape of oil from non-oil tankers.

(10) Even if the plaintiffs were correct in their interpretation of the word 'ship', they would still have to satisfy the court that the plaintiffs have incurred or might but for the preventive measures have incurred a liability to the first defendants for any such damage.

(11) Without having to reply on the explanatory statement, it seemed clear that when s 15 of the UK 1971 Act was enacted, the word 'liability' could only have referred to common law liability as there was then no statutory liability on the part of any shipowner to pay for any preventive measures to prevent oil pollution.

(12) In Singapore, it was also clear that when the Bill for the MSOPA 1981 was presented to Parliament containing a clause to repeal s 13 of the CLOPA 1973, there was also no statutory liability existing in relation to cleaning up the sea.

(13) There was a conclusive argument against construing the word 'liability' to include a statutory liability in relation to the first defendants. Under s 18, the tortfeasor is only liable for the costs of preventive measures taken by another person if he incurs or might incur a liability but for those measures. If the word 'liability' were to include a statutory duty, then it must follow that the tortfeasor has in any case already incurred a statutory liability to the person who has taken the preventive measures. Therefore the word 'liability' is not intended to refer to liability under s 14 of the PPSA 1971-81.

(14) The fact that the MSOPA 1981 and s 14 of the PPSA 1971-81 came into operation on the same day was not significant. If the former, which was Act 15 of 1981, covered the liability contended by the plaintiffs, then the PPSA 1981, which was Act 16 of 1981, would have been unnecessary. The inference must be that the latter was enacted intentionally to enable the first defendants to recover from any shipowner, not coming within s 3 of the MSOPA 1981 (ie any non oil-tanker).

(15) The court accordingly held that the liability of the plaintiffs to the first defendants for the costs incurred by them in reasonably taking measures to prevent or reduce oil pollution damage is recoverable in full within s 14 of the PPSA 1971-1981 and such liability is not affected by s 18 of the MSOPA 1981.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 56 of 1989.]

**Cases referred to**

1 *The Millie* (1939) 64 Ll L Rep 318 (refd)
2 *Hall Brothers Steamship Co* v *Young* [1939] 1 KB 748 (refd)
3 *The Stonedale (No 1)* [1956] AC 1 (refd)
4 *The Putbus* [1969] 1 Lloyd's Rep 9 (refd)
5 *The Kirknes* [1957] P 51 (refd)

**Legislation referred to**

Civil Liability (Oil Pollution) Act 1973 ss 3, 6(1), 10
Merchant Shipping Act (Cap 172, 1970 Ed) s 272
Merchant Shipping (Oil Pollution) Act 1981 ss 3, 4, 5, 6, 9, 18
Prevention of Pollution of the Sea Act 1971 ss 3, 4, 5, 13, 14
Prevention of Pollution of the Sea (Amendment) Act 1981
Prevention of Oil Pollution Act 1971 [UK] s 15
International Convention for the Prevention of Pollution of the Sea by Oil 1954
International Convention on Civil Liability for Oil Pollution Damage 1969 art 1(7)

*Loo Lip Seng* for the plaintiffs.
*G Pannirselvam* and *Steven Chong* for the first defendants.
*Steven Chong* for the fifth defendants.
*Ian Ng* for the third defendants.
*Scott Thillagaratnam* for the fourth defendants.
*MP Rai* for the sixth defendants.

*Cur Adv Vult*

**Chan Sek Keong J**: The issue as stated to the court as a preliminary point of law concerns the extent of the liability of the plaintiffs to the first defendants for the cost of the measures taken by the first defendants in 1987 to prevent oil pollution damage in the area of Singapore. Although there are nominally six defendants in this action, only the first defendants and the plaintiffs are parties to the preliminary point of law. The following facts have been agreed:

1 The plaintiffs were the owners of the 'Stolt Advance', a motor tanker of about 14,418 tonnes (gross) and 9,792 tonnes (net) with a deadweight of 22,908 tonnes. At the material time, she was carrying about 12,476 metric tonnes of various types of chemicals.

2 She also had on board approximately 1,505 metric tonnes of fuel oil, 213 metric tonnes of diesel oil, 30 metric tonnes of lubrication oil, 50 metric tonnes fresh water and 1,100 metric tonnes of ballast. She was *not* carrying any cargo of oil in bulk.

3 On her voyage to Taiwan the vessel was grounded on the edge of a reef due east of Batu Berhanti light in the approximate position latitude 01°11.10' north and longitude 103°53.38' east on 7 July 1987.

4 Negligence of the servants or agents of the plaintiffs in the navigation or management of the vessel caused or contributed to the grounding.

5 As a result of the said grounding, the vessel ruptured her forward deep tank and oil (intermediate fuel oil) from her bunkers escaped into the sea. The said oil was washed into the waters of Singapore and the waters of West Malaysia off south-east Johore.

6 Following the entry of the oil into Singapore waters, the first defendants and agents appointed by them took measures to remove or eliminate the oil in order to prevent and reduce damage caused by the oil pollution in Singapore waters. In respect of such measures, the first defendants have incurred expenses amounting to $1,376,468. The first defendants are entitled to recover the costs of such measures from the plaintiffs by virtue of s 14 of the Prevention of Pollution of the Sea Act 1971 ('the PPSA 1971') (as amended by the Prevention of Pollution of the Sea (Amendment) Act 1981 ('the PPS(A) 1981 and, collectively, 'the PPSA 1971-81').

7 The said oil pollution also caused loss and damage to a number of other parties of whom the following had made claims against the plaintiffs:

(i) the third defendants for $401,050 in respect of damage to their property, loss of profits and general damages;

(ii) the fourth defendants for $198,997.30 in respect of damage to their property and cleaning up costs, loss of profits and general damages;

(iii) the fifth defendant for $2,397,750 in respect of damage to fish farm, loss of larvae fries and fingerlings and damage to equipment;

(iv) the sixth defendant for $30,000;

(v) Singapore fish farmers through the Primary Production Department for $1,369,952.70;

(vi) Malaysian fish farmers through the Director of Fisheries, Johore, Malaysia for S$95,850.

The dispute between the plaintiffs and the first defendants turns on the meaning of s 18 of the Merchant Shipping (Oil Pollution) Act 1981 ('the MSOPA 1981') and its effect on s 14 of the PPSA 1971-81. Both statutory provisions are concerned with the recovery from the owners of vessels which have discharged oil into the sea in or around Singapore by the persons who have taken measures to prevent damage from such discharge. The basic approach of the plaintiffs to the effect of the two statutory provisions is that they should be read as covering the same liability whereas the basic approach of the first defendants is that s 18 of the MSOPA 1981 deals with oil pollution by oil tankers whereas s 14 of the PPSA 1971-81 deals with oil pollution by non-oil tankers. The 'Stolt Advance' was not an oil tanker.

The PPSA 1971 and MSOPA 1981 are relatively new legislation in the field of environmental law enacted to regulate and impose liability on owners and operators of ships which discharge oil of any kind, toxic wastes, garbage, trade effluent, etc into or around Singapore waters thereby polluting the same and causing damage to the environment in general and property in particular. Potential environmental damage to wild life and flora of coastal states all over the world took on a new dimension and urgency with the advent of large crude oil bulk carriers (the VLCCs) which were built to carry hundreds of thousands of tons of crude oil as cargo at any time, and in the event of a casualty, were liable to discharge the same into the sea.

The PPSA 1971 was enacted to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil 1954. It came into force on 1 February 1972, except for s 13. Section 3 makes it an offence for a Singapore ship to discharge any oil or mixture (as defined) into any part of the sea outside the territorial limits of Singapore and s 4 makes it an offence for any vessel to discharge any oil or mixture into Singapore waters. These are strict liability offences and s 5 provides special defences to an owner, master or agent where it is proved that the discharge of the oil or mixtures is necessary or reasonable for the purpose of securing the safety of the vessel or preventing damage to any vessel or cargo or of saving life.

In relation to civil liability, the original s 13 provided that the owner of any vessel should be liable to pay the cost

of measures taken by the appointed authority (viz the first defendants) in removing or eliminating the oil, mixture containing oil, garbage, waste matter substance of a dangerous or obnoxious nature or trade effluent. Liability under s 13 was without fault and also unlimited.

The next piece of Singapore legislation in the area of environmental law was the Civil Liability (Oil Pollution) Act 1973 (the 'CLOPA 1973') which came into force on 1 October 1973. The CLOPA 1973, inter alia, repealed s 13 of the PPSA 1971. This Act also imposed strict liability on, inter alia, the owner of a ship for oil pollution damage caused in the area of Singapore resulting from the discharge or escape of oil of any kind from the ship, whether such oil was carried in bulk as cargo or otherwise: see s 3. The liability of the shipowner extended to (a) any damage caused by contamination resulting from the discharge or escape of oil; (b) the cost of measures reasonably taken after the discharge or escape of oil for the purpose of preventing or reducing any such damage; and (c) any damage caused by any measures so taken.

In relation to the liability of the shipowner under s 3, s 6(1) of the CLOPA 1973 provided as follows:

> Where the owner of a ship incurs a liability under section 3 by reason of a discharge or escape which occurred without his actual fault or privity
>
> (a) section 295 [now section 272] of the Merchant Shipping Act shall not apply in relation to that liability; but
> (b) his liability (that is to say, the aggregate of his liabilities under section 3 resulting from the discharge or escape) shall not exceed three hundred and seventy-five dollars for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) fifty million dollars.

The object of s 6(1) was clearly to increase the liability of a shipowner as hitherto provided by s 295 (s 272) of the Merchant Shipping Act ('the MSA'). However, in respect of expenses incurred by persons who had taken reasonable measures to prevent or reduce damage, s 10 provided as follows:

> (1) Where
>
> (a) after an escape or discharge of oil from a ship, offshore facility, or onshore facility, measures are reasonably taken for the purpose of preventing or reducing damage in the area of Singapore which may be caused by contamination resulting from the discharge or escape; and
> (b) any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 3, for any such damage, then, notwithstanding that paragraph (d) of subsection (1) of that section does not apply, he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.
>
> (2) For the purposes of section 295 [272] of the Merchant Shipping Act, any liability incurred under this section shall be deemed to be a liability to damages in respect of such loss, damage or infringement mentioned in paragraph (d) of subsection (1) of that section.

In 1981 the MSOPA 1981 was passed by Parliament to give effect to the International Convention on Civil Liability for Oil Pollution Damage ('the Civil Liability Convention') done in Brussels on 29 November 1969 and the Protocol done in London on 19 November 1976. The Civil Liability Convention was signed following the stranding of the Torrey Canyon in March 1967 when about 100,000 tons of crude oil were discharged into the sea near Cornwall. The MSOPA 1981 was substantially a re-enactment of CLOPA 1973 (which was repealed) except that its scope was restricted to ships which carry oil in bulk as cargo, ie oil tankers.

The fundamental principle of the Civil Liability Convention is that owners of oil tankers shall be liable for oil pollution damage without fault or culpability on their part ('the Convention liability'), subject to very limited exceptions. Thus s 3 of the MSOPA 1981 provides that:

> (1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of oil in bulk, any oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, except as otherwise provided by this Act -
>
> (a) for any damage caused in the area of Singapore by contamination resulting from the discharge or escape;
> (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the area of Singapore; and
> (c) for any damage caused in the area of Singapore by any measures so taken.
>
> (2) Where a person incurs a liability under section (1), he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the area of Singapore included the area of any other Convention country.
>
> (3) Where oil is discharged or escapes from two or more ships and -
>
> (a) a liability is incurred under this section by the owner of each of them; but
> (b) the damage or cost of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,
>
> each of the owners shall be liable, jointly with the other or others, for the damage or cost for which the owners together would be liable under this section.
>
> (4) In relation to any damage or loss resulting from the discharge or escape of any oil from a ship, references in this Act to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape.
>
> (5) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.
>
> (6) The Contributory Negligence and Personal Injuries Act shall apply in relation to any damage or cost for which a

person is liable under this section, but which is not due to his fault, as if it were due to his fault.

Section 4 provides for special defences to shipowners. Section 5 restricts the shipowner's liability for oil pollution damage to the liability under s 3 and nothing more. Section 9 also restricts the liability of any other person who may be concurrently liable with the shipowner.

Section 6 of the MSOPA 1981 is relevant. It provides as follows:

(1) Where the owner of a ship incurs a liability under section 3 by reason of a discharge or an escape which occurred without his actual fault or privity -

(a) section 295 [272] of the Merchant Shipping Act (relating to the limitation of liability) shall not apply in relation to that liability; but

(b) he may limit that liability in accordance with the provisions of this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 3 resulting from the discharge or escape) shall not exceed 133 special drawing rights for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 14 million special drawing rights.

(2) [Provisions to ascertain tonnage].

By reason of s 6(1)(a), the protection given to a shipowner under s 272 of the MSA is taken away from them but he may limit his liability in accordance with s 6(1)(b) of the MSOPA 1981. The object of this provision is substantially the same as that of s 6(1) of the CLOPA 1973 and is designed to strike a balance between the need to move oil (as defined) from oil producing countries to oil consuming countries and the shipowner's vital role in fulfilling such a need.

The next relevant provision, ie s 18 of the MSOPA 1981 will be examined later in connection with the submissions of counsel on their effect.

In 1981, the PPSA 1971 was also amended by the PPS(A) 1981 which inserted s 14 to the PPSA 1971. Section 14 reads:

(1) If any oil or mixture containing oil is discharged or escapes from any vessel into Singapore waters or into the sea outside the territorial limits of Singapore and such oil subsequently flows or drifts into Singapore waters, the owner of the vessel shall be liable for the costs of any measure reasonably taken *by the appointed authority* after the discharge or escape for the purpose of removing the same and for preventing or reducing any damage caused in Singapore by contamination resulting from the discharge or escape. (Emphasis added).

(2) Where the oil or mixture containing oil is discharged or escapes from two or more vessels and a liability is incurred under this section by the owner of each of them but the damage or costs of which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, the owners shall be liable, jointly and severally with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(3) The reference in this section to the measures reasonably taken after the discharge or escape of oil for the purpose of preventing or reducing any damage caused by contamination resulting from such discharge or escape shall include actions taken to remove the oil from the water and foreshores or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shell-fish, wildlife, and public and private property, foreshores and beaches.

(4) This section shall not apply where section 3 of the Merchant Shipping (Oil Pollution) Act 1981, applies.

To end this broad outline of the relevant legislation in this area of law, I should mention one other fact which has been relied upon by counsel for the plaintiffs as having a bearing on the meaning of s 18 of the MSOPA 1981, ie the fact that MSOPA 1981 and the PPS(A) 1981 came into operation on the same day, ie 15 December 1981.

I turn now to the submissions of counsel. In relation to the legal nature of the first defendants' claim, the first defendants' counsel has referred me to certain authorities, viz *The 'Millie'*;[1] *Hall Brothers Steamship Co* v *Young*;[2] *The 'Stonedale' (No 1)*;[3] *The 'Putbus'*[4] and *The 'Kirknes'*[5] as having established the following principles: (1) a claim for damages depends on establishing a wrong which is either a tort or a breach of contract; (2) a monetary claim which is recoverable under a statutory provision without having to establish a wrong, ie liability without fault, is not 'damages' but a statutory debt. He therefore submits that the claim of the first defendants for recovery of the cost of measures taken by them to remove or eliminate the oil discharged by the plaintiffs' vessel is a claim for a statutory debt and is not a claim for damage coming under s 272(1)(d) of the MSA.

Counsel for the plaintiffs concedes that the claim of the first defendants is for recovery of a statutory debt on the basis of these principles, but he nevertheless contends that the liability of the plaintiffs to the first defendants has statutorily been classified by s 18 of the MSOPA 1981 as damage coming within s 272(1)(d) of the MSA.

I turn now to s 18 which provides as follows:

(1) Where -

(a) after a discharge or escape of oil from a *ship* measures are reasonably taken for the purpose of preventing or reducing damage in the area of Singapore which may be caused by contamination resulting from the discharge or escape; and

(b) *any person incurs*, or might but for the measures have incurred, a *liability*, otherwise than under section 3 for any such damage,

then, notwithstanding that paragraph (b) of subsection (1) of that section does not apply, *he shall be liable* for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty. (Emphasis added).

(2) For the purposes of section 295 [272] of the Merchant Shipping Act, any liability incurred under this section shall

be deemed to be a liability to damages in respect of such loss, damage or infringement as is mentioned in paragraph (d) of subsection (1) of that section.

The general effect of s 18 is as follows: (a) a person ('the tortfeasor') is liable ('the liability'), without fault, for the cost of preventive measures reasonably taken by any other person for the purpose of preventing or reducing oil pollution damage where (1) there is a discharge of oil from a ship and such preventive measures have been taken; (2) where the tortfeasor incurs or might but for the measures have incurred a liability for any damage; (3) that liability (in (2)) is not a s 3 liability (ie the convention liability); and (b) the liability is deemed to be a liability for the purpose of s 272(1)(d) of the MSA.

The case before me involves the liability of the owners (viz the plaintiffs) of a ship which was not carrying oil in bulk as cargo. The plaintiffs are therefore not subject to the convention liability. They have contended that their liability to the first defendants is a non-convention liability, which is imposed by s 18(1) of the MSOPA 1981, and for that reason, limited by virtue of s 18(2).

The submissions of counsel for the plaintiffs may be summarized as follows: (1) the expression 'ship' in s 18(1) should be construed to mean any non-oil tanker as s 18 is intended to apply to non-convention liabilities; (2) the plaintiffs are owners of a non-oil tanker who have incurred a non-convention liability to the first defendants under s 14 of the PPSA 1971-81; and (3) the plaintiffs' liability to the first defendants therefore satisfies the conditions of a liability under s 18(1) and therefore subject to the limitation imposed by s 18(2).

The submissions of counsel for the first defendants may be summarized as follows: (1) the MSOPA 1981 is intended to impose strict liability on owners of ships carrying oil in bulk (ie oil tankers) which cause oil pollution damage by the discharge or escape of persistent oil; (2) for this reason, the word 'ship' is defined in s 2 thereof as 'any sea-going vessel and any seaborne craft of any type whatsoever carrying oil in bulk as cargo'; (3) s 18 applies only to a ship as defined and therefore does not apply to the 'Stolt Advance' which is not such kind of a ship; (4) moreover, the word 'liability' in s 18(1)(b) refers to a common law liability and not a statutory liability (such as is provided by s 14 of the PPSA 1971-81); (5) therefore s 18(1) of the MSOPA 1981 does not apply and the liability of the plaintiffs to the defendants is not limited by s 18(2).

Counsel for the plaintiffs says that his construction of s 18 of the MSOPA 1981 is supported by two annotations to the corresponding s 15 of the 1971 UK Act by John H Bates in his two books, viz *United Kingdom Marine Pollution Law* (1985) and *The United Kingdom Marine Oil Pollution Legislation* (1987). In my view, these annotations do not state that the said section applies to non-tankers, but only that it refers to a non-convention liability; this may simply mean that it does not fall within s 1 thereof (corresponding to s 3 of the MSOPA 1981). A demise charterer's liability would be an example of a non-convention liability falling within s 18 but not s 3.

Counsel has also contended that it is illogical for the law to allow owners of oil tankers (which in any casualty resulting in a discharge or escape of oil are likely to inflict much greater damage to the environment) to limit their liability and not to allow owners of non-oil tankers (which in similar circumstances are likely to cause much less damage to the environment). In my view, this argument is untenable. On the contrary, there is, in the context of oil pollution damage to the environment, good logic and reason for the law to limit the liability of owners of oil tankers but not that of owners of non-oil tankers for oil pollution damage, precisely on the ground that the liability of the former group is potentially much larger than that of the latter group. If owners of oil tankers all over the world are faced with potential unlimited liability in carrying on their business of transporting oil from place to place, they will become uninsurable and the costs of transporting oil will be enormous. Such costs will inevitably and ultimately be translated into higher costs for consumers.

In my view, the interpretation of s 18 of the MSOPA 1981 advanced by counsel for the first defendants is the correct interpretation. The expression 'ship' is a defined term and, accordingly, unless the context otherwise requires, the word 'ship' in s 18(1) must bear its defined meaning. There is nothing in the context of that section which requires that it be interpreted in its ordinary non-defined sense of any ship which discharges oil or from which oil escapes.

In defining 'ship' in the manner it has done, Parliament has not restricted but has given effect to the intention of the Civil Liability Convention by following the definition of 'ship' as provided in art 1(7) thereof. The Civil Liability Convention was never intended to deal with oil which escapes from ships not carrying oil in bulk as cargo: see Abecassis and Jarashow, *Oil Pollution from Ships* (2nd Ed, 1985) at p 193. Accordingly, s 18 has no application to non-oil tankers.

This should be sufficient to dispose of the preliminary point of law. However, even if counsel for the plaintiffs were correct in construing the expression 'ship' to mean any sea-going vessel, he would still have to overcome one further obstacle, ie he must satisfy the court that the plaintiffs have incurred or might but for the preventive measures have incurred a *liability* to the first defendants for any such damage. He contends that the expression 'liability' in s 18(1) comprehends the plaintiffs' statutory liability under s 14 of the PPSA 1971-81 as the wording of s 18(1) is clear and moreover, both the MSOPA 1981 and s 14 of the PPSA 1971-81 came into force on the same day. He

does not concede that the expression refers only to liability at common law.

Counsel for the first defendants, on the other hand, contends that the word 'liability' means liability at common law as that was its original meaning when it was first enacted as part of s 15 of the UK Act 1971. Counsel also refers to the explanatory statement to the Bill for the PPSA 1971 which states that s 18 gives a right to recover the cost of measures reasonably taken to prevent pollution damage in cases where liability is not based on s 3 (ie the convention liability) but on the common law. Counsel for the plaintiffs objects to any reference being made to the explanatory statement to construe the meaning of an expression in a statute on the ground that it is not permitted by the law.

In my view, without having to rely on the explanatory statement, it seems clear that when s 15 of the UK 1971 Act was enacted, the word 'liability' could only have referred to common law liability as there was then no statutory liability on the part of any shipowner or operator to pay the cost of measures taken by any person to prevent or reduce damage by oil pollution. The only liability then existing lay in the common law, and this was subject to the existence of a duty of care, proof of causation and damage recognized by the law: see the useful discussion in Cap 15 of *Oil Pollution from Ships*. Although there was already in force in the United Kingdom, the Prevention of Oil Pollution Act 1971 (which is the corresponding legislation for the PPSA 1971), the UK Act did not have a provision similar to s 13 of the PPSA 1971. As s 13 itself was never put into operation before its repeal by the CLOPA 1973, it was clear that when the Bill for the MSOPA 1981 was presented to Parliament containing a clause to repeal s 13 of the CLOPA 1973, there was also no statutory liability existing in Singapore in relation to the cost of cleaning up the sea.

There is in my view a conclusive argument against construing the expression 'liability' to include a statutory liability in relation to the first defendants. It should be recalled that under s 18, the tortfeasor is only liable for the cost of preventive measures taken by another person if he incurs or might have incurred a liability but for those measures. Thus, if the word 'liability' were to include a statutory liability (such as provided by section 14 of the PPSA 1971-81), then it must follow that the tortfeasor has in any case already incurred a statutory liability to the person who has taken the preventive measures; if so, it would be pointless and absurd for Parliament to replicate the very same liability in that section. It must therefore follow that the expression 'liability' in s 18(1)(b) is not intended to refer to the statutory liability under s 14 of the PPSA 1971-81.

Finally, I do not think that the fact of the MSOPA 1981 and s 14 of the PPSA 1971-81 coming into operation on the same day provides any support for the contention of counsel for the plaintiffs. In merely emphasizing the date of coming into operation of the two provisions, he has failed to note the significance of the chronological sequence of the said Acts: the MSOPA 1981 was passed as Act 15 of 1981 whereas the PPS(A) 1981 was passed as Act 16 of 1981. If Act 15 of 1981 had covered the liability contended for by the plaintiffs, Act 16 of 1981 would have been unnecessary. The inference must be that Act 16 of 1981 was enacted intentionally to enable the first defendants to recover from any shipowner, not coming within s 3 of the MSOPA 1981 (viz the owner of any non oil-tanker) the cost, without any limit, of measures taken by them. Even assuming that s 14 of the PPSA 1971-81 were a replication of s 18(2) of the MSOPA 1981, that would still not avail the plaintiffs as the first defendants' claim is not founded on s 18 but on s 14 of the PPSA 1971-81. Section 18(2) of the MSOPA 1981 applies only to a liability under that section and not a liability under some other section of some other Act.

To summarize, my views on s 18 of the MSOPA 1981 are: (a) s 18(1) applies to oil tankers and not to non-oil tankers; (b) the liability of the plaintiffs, in relation to the first defendants, is not a liability under s 18(1) which is deemed by s 18(2) to be limited under s 272 of the MSA.

Accordingly, to answer the preliminary point of law, I hold that the liability of the plaintiffs to the first defendants for the costs incurred by them in reasonably taking measures to prevent or reduce oil pollution damage is recoverable in full under s 14 of the PPSA 1971-1981 and that such liability is not affected by s 18 of the MSOPA 1981.

*Order accordingly.*

Solicitors: *Ang & Partners*; *Drew & Napier*; *Prakash Gurbani & Chong*; *Khattar Wong & Partners*; *Niru & Co.*

Reported by *Terence Tan Bian Chye*